



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 596**

IN THE MATTER OF RICHARD GOODHUE

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Richard Goodhue ("Goodhue") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On September 23, 1998, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Goodhue. The Commission has concluded the inquiry and, on June 23, 1999, found reasonable cause to believe that Goodhue violated G.L. c. 268A.

The Commission and Goodhue now agree to the following findings of facts and conclusions of law:

1. Goodhue is a member of the Randolph Planning Board ("Planning Board"). Goodhue was first elected to this part-time, unpaid municipal position in 1992. As a Planning Board member, Goodhue is a municipal employee as defined in G.L. c. 268A, §1. As such, Goodhue is subject to the provisions of the conflict of interest law, G.L. c. 268A.

2. The Planning Board has jurisdiction over subdivisions in Randolph. In that connection, the Planning Board reviews subdivision plans, holds public hearings and grants or denies approval for subdivisions.

3. Goodhue is privately self-employed as a mason.

4. West Point Development Co., Inc. ("West Point") is a real estate development company. West Point is operated by Michael Kmito and his father Louis J. Kmito ("the Kmitos"). Since its 1993 incorporation, West Point has developed two residential subdivisions and completed a few smaller projects in Randolph.

5. From the mid-1980s until late 1996, Goodhue did masonry work for Louis J. Kmito, Michael Kmito and (after 1992) West Point. In the 1980s and in the early 1990s, Goodhue did masonry work at the Marie Way subdivision in Randolph then under development by a corporation fifty percent owned by Louis J. Kmito. In September 1992, Goodhue received \$2,600 from Michael Kmito for masonry work. Between September 1993 and January 1997, West Point paid Goodhue a total of \$32,330.25 for masonry work.^{1/}

6. From 1993 until late 1996, West Point's practice was to hire Goodhue whenever it needed a mason.^{2/} Goodhue's work for West Point consisted of building fireplaces, chimneys, brick walkways, brick steps and catch basins. All of Goodhue's work for West Point was done in Randolph.

7. In 1996, West Point sought Planning Board approval for a 42-lot residential subdivision in Randolph called Autumn Woods. Autumn Woods was West Point's second Randolph residential subdivision.

8. On March 4, 1996, Goodhue was present at a Planning Board public hearing at which the proposed Autumn Woods subdivision was presented. No votes were taken. At the Planning Board's May 13, 1996 meeting, Goodhue moved and voted to accept the definitive plan of the Autumn Woods subdivision. The vote was unanimous.^{3/} On July 15, 1996, the Planning Board, including Goodhue, signed the Planning Board's approval of the Autumn Woods subdivision plan.

9. During the months that the Autumn Wood's subdivision was before the Planning Board for review and approval, Goodhue did masonry work for West Point at the corporation's other projects in Randolph. For this masonry work, West Point paid Goodhue \$360.00 on July 12, 1996, \$3,000.00 on August 13, 1996 and \$960.00 on September 17, 1996.

10. Given his building trade experience and long course of private dealings with the Kmitos and West Point, Goodhue had reason to foresee, at the time he participated in the Planning Board's review and approval of the Autumn Woods subdivision, that the construction of the subdivision would require masonry work and that West Point would continue its well-established practice of hiring him to do its masonry work.^{4/} Thus, at the time of his official actions as a Planning Board member concerning Autumn Woods, Goodhue knew that he was likely to do masonry work at the subdivision if the Planning Board approved its development by West Point.^{5/}

11. Shortly after West Point began construction of the Autumn Woods subdivision in August 1996, Goodhue was hired to do masonry work at the subdivision. Between August 1996 and December 1996, Goodhue constructed three chimneys and fireplaces, and several brick walkways, brick steps and catch basins at Autumn Woods. For this masonry work, Goodhue billed West Point and was paid a total of \$15,935.25 between October 1996 and January 1997.

12. In or about December 1996, Goodhue and the Kmitos had a disagreement and acrimonious falling out. After December 1996, Goodhue did no further masonry work for West Point or the Kmitos.

13. General Laws chapter 268A, §19, in relevant part, prohibits a municipal employee from participating^{6/} as such in a particular matter^{7/} in which the employee has to his knowledge a financial interest.^{8/}

14. The Planning Board's review and approval of the Autumn Woods subdivision was a particular matter. Goodhue participated in this particular matter as a Planning Board member by discussing and voting on the subdivision and signing the definitive subdivision plans. At the time of this official participation, Goodhue had to his knowledge a reasonably foreseeable financial interest^{9/} in the Autumn Woods particular matter in that Goodhue knew that he was likely to do masonry work at the approved subdivision.^{10/}

15. Accordingly, when Goodhue participated in the Planning Board's review and approval of Autumn Woods, Goodhue participated as a Planning Board member in a particular matter in which to his knowledge he had a financial interest. By so doing, Goodhue violated §19.

16. Goodhue self-reported the facts which led to the Commission's preliminary inquiry into this matter and he fully cooperated with the Commission's investigation. Furthermore, the Commission is aware of no evidence to indicate that Goodhue in his conduct as described above took any actions which were against the town's interest. Nor is the Commission aware of any evidence that any of Goodhue's above-described official actions were influenced by his dealings or relationship with the Kmitos or West Point.

17. According to Goodhue, when he participated as described above, he had no knowledge that his actions would violate the conflict of interest law.^{11/}

In view of the foregoing violation of G.L. c. 268A by Goodhue, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Goodhue:

(1) that Goodhue pay the Commission the sum of seven hundred and fifty dollars (\$750.00) as a civil penalty for violating G.L. c. 268A, §19; and

(2) that Goodhue waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: March 4, 2000

^{1/}All payments to Goodhue stated in this Agreement are gross payments which generally include Goodhue's expenses as well as his profit. West Point paid Goodhue a total of \$12,075 between September 1993 and May 1995, and a total of \$20,255.25 between May 1996 and January 1997. Most of these amounts were for work at West Point's two Randolph subdivisions, Spring Hill Estates and Autumn Woods.

^{2/}As is common among builders, West Point's practice is to repeatedly rehire building trade subcontractors, like Goodhue, whose work is satisfactory.

^{3/}The Commission is not aware of any evidence of any controversy or contention concerning the May vote.

^{4/}Goodhue was aware at the time that in the ordinary course of events the construction of a 42-lot residential subdivision would require some masonry work.

^{5/}The Commission is not aware of any evidence that Goodhue's official actions concerning the Kmitos or West Point were in fact affected or influenced by this knowledge.

^{6/}"Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268, §1(j).

^{7/}"Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding

enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

^{8/}While there are exceptions to the general prohibition of §19, they do not apply in this case.

^{9/}“Financial interest” means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133, 345 N.E. 2d 888 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. See *EC-COI-84-96*.

^{10/}As set forth above, the Commission is not aware of any evidence that this knowledge in fact influenced or affected Goodhue's official actions.

^{11/}Ignorance of the law is no defense to a violation of G.L. c. 268A. *In the Matter of C. Joseph Doyle*, 1980 SEC 11,13. See also, *Scola v. Scola*, 318 Mass. 1,7,(1945).